



**Telecommunications
Industry
Ombudsman**

**Simon Cohen
Ombudsman**

24 June 2010

Mr Jerome Brown
The Secretary
Joint Select Committee on Cyber-Safety
R1-109, Parliament House
P.O. Box 6021
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Dear Mr Brown

Joint Select Committee Inquiry on Cyber-Safety

Thank you for giving the TIO the opportunity to provide comments in relation to terms of reference of the Joint Select Committee Inquiry on Cyber-Safety.

The TIO welcomes the establishment of the Joint Select Committee on Cyber-Safety and believes that the outcomes of the Inquiry will be important to the development of safeguards and measures to protect children and young people from some of the serious risks of the online environment.

As you may be aware, the TIO receives and investigates complaints from residential consumers and small businesses about their internet, mobile or landline service. These complaints relate to the supply, billing, connection and transfer of these services. We do not have jurisdiction over content or safety issues in the online environment – nor do we currently record complaints about these issues.

We have therefore confined our comments in this submission to the first and last terms of reference of the Joint Select Committee on Cyber Safety, in so far as these are relevant to, or within the expertise of, the TIO. Specifically, we set out some general comments about:

1. the online environment in which consumers currently engage and the points of access via internet or mobile services, with reference to the number and nature of complaints that we receive about internet or mobile services, and
2. key considerations for the potential establishment of an Online Ombudsman.

We also set out brief information about the TIO for your reference.

“... providing independent, just, informal and speedy resolution of complaints”

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Please do not hesitate to contact our Manager for Planning and Stakeholder Engagement, David Brockman, on 03 8600 8765 should you have any questions.

Yours sincerely

Simon Cohen
Ombudsman

About the TIO

The TIO is a free and independent alternative dispute resolution scheme for small business and residential consumers in Australia who have a complaint about their telephone, mobile or internet service. We aim to settle disputes quickly in a fair, objective and non-bureaucratic way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances.

Before the TIO becomes involved in a complaint, the service provider is given a reasonable opportunity to resolve the complaint with its customer.

The TIO investigates complaints by considering the facts provided by both parties in a dispute and seeks to assist both parties to reach a fair and equitable resolution. The TIO has the authority to make decisions up to the value of \$30,000 that are legally binding upon telecommunications companies, and recommendations up to the value of \$85,000.

We are independent of telecommunications companies, consumer groups and government. However, we provide information and assistance to organisations where this is required by law or where this will help the industry and consumers to resolve complaints.

The TIO does not play a consumer advocacy role. Regulators such as the Australian Communications and Media Authority and the Australian Competition and Consumer Commission as well as consumer advocate groups provide a layer of protection for consumers where disputes between consumers and service providers involve issues going beyond the TIO's jurisdiction.

Further information about the TIO is available at www.tio.com.au.

We record complaints according to the types of issues that these complaints present. These include provisioning/connection delays, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one complaint issue. Some complaints can involve multiple complaint issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or escalated (a complaint handling issue).

TIO complaints are broadly classified according to service types – internet, mobile, landline and mobile premium services – and are investigated according to the types of issues they present.

Information about TIO complaints and complaint issues recorded in 2008/09 is available at www.tio.com.au.

Access to the online environment – TIO complaints and complaint issues about internet and mobile services

As the Committee is aware, the availability and affordability of 'smart' mobile phones and tablet devices means that access to the internet is easier now than ever before for Australian consumers of all ages. The TIO notes that, according to the Australian Bureau of Statistics (ABS) Internet Activity Survey, there were 9.1 million active internet subscribers in Australia as at December 2009¹. As for mobile services, there are over 24.22 million mobile phone users in Australia as at 30 June 2009².

The quality of access to the internet has improved with service providers competing to provide faster and more efficient services, using ADSL/DSL/Naked DSL and wireless technology. The ABS Internet

¹ Australian Bureau of Statistics (2009) 'Internet Activity Australia, December 2009' – Catalogue Number 8153.0+.

² The ACMA Communications Report 2008-09.

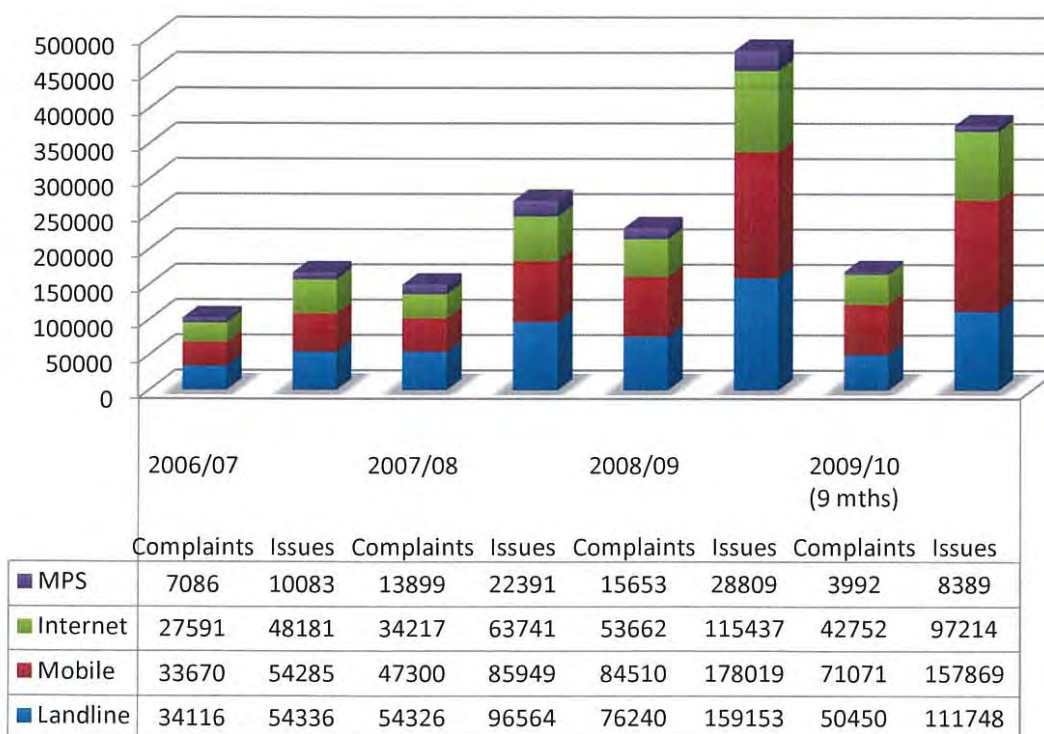
Activity Survey shows that wireless is the fastest growing internet technology, with 2.9 million users as at December 2009, which is a growth of 40% since June 2009³.

A separate survey conducted in April 2010 by Nielsen Company, indicates nearly one half of mobile phone users have an internet capable handset and one third use the internet regularly via their mobile handset. The most common internet activity is online searches although other popular uses included checking news and weather and maps and directions. Email use constitutes 58% and social networking is 39%, with most users in the latter category accessing Facebook⁴.

The increase in the take up of internet capable devices is reflected in the increase in complaints received by the TIO over the past few years about these services.

The graph below depicts the growth in complaints and complaint issues recorded by the TIO over a three year period from 2006/07 to 2008/09 and in the first 9 months of the current financial year 2009/10⁵. Complaints about internet services have increased by 94% and mobile services by 151% over the past three financial years with small decreases anticipated at the end of the current financial year 2009/10.

TIO Complaints and Complaint Issues – 2006/07, 2007/08, 2008/09 and first 9 months of 2009/10



As noted above, each complaint to the TIO features one or more particular complaint 'issues'. In terms of complaint issues pertinent to internet and mobile complaints, there is a wide range. These include – disputed usage charges, faults or connection delays, inadequate point of sale advice, incorrect credit management procedures and poor customer service or complaint handling.

³ Australian Bureau of Statistics (2009) 'Internet Activity Australia, December 2009' – Catalogue Number 8153.0+

⁴ www.theage.com.au/digital-life/mobiles/australians-take-to-mobile-internet-20100429-tszn.html.

⁵ This data relates to the period from 1 July 2009 to 31 March 2010, and is subject to further quality assurance at the end of the financial year 2009/2010.

As mentioned above, the TIO does not handle complaints from consumers that relate to cyber-safety, identify theft, inappropriate social behaviours in the online environment or other areas falling within the remit of the Inquiry on Cyber-Safety.

We do handle complaints relating to breaches of privacy where these relate to the alleged conduct of telecommunications service providers in relation to their customers' personal information. These form a relatively small number of the TIO's complaint issues relating to internet or mobile complaints.

However, in its broadest sense, being 'safe' in an online environment includes all users, and especially those who may be vulnerable, having appropriate consumer protection. Two categories of complaints to the TIO relating to internet and mobile services that may be relevant to this aspect of Cyber-Safety are:

- (a) *internet usage charges* – this category formed 6% of internet related complaint issues and 1.4% of mobile related complaints issues recorded by the TIO in 2008/09. Whilst this category relates to disputed internet usage charges, the TIO is aware that some of these complaints arise due to a possible lack of awareness or understanding about the ways in which consumers access the internet, how they may be charged for this access, and other users (including children or young people) who have access via wireless technology or features on mobile handsets that allow such access;
- (b) *point of sale advice about the product and terms* – this category formed 6% of internet related complaint issues and 7% of mobile related complaint issues recorded by the TIO in 2008/09. This category of complaint issues indicates potential lack of consumer awareness or understanding about the complexity of the various internet or mobile products/services and how these services can be accessed or used. The TIO is aware that in some instances, advice to limit or restrict the capabilities of the product/services, for example, disabling internet access from mobile handsets, is not provided to the consumer at the point of sale where a need for this may be evident – for example, when a consumer indicates that the service will be used by their child to make/receive calls.

The TIO believes that in addition to further education and information about other aspects of cyber-safety, consumers need clear, reliable and useful information, at the time of purchase and on an ongoing manner, about the complexities and different capabilities involved in the products/services that they purchase, to be better empowered about how they (or their children) access the internet.

Key considerations for the establishment of an Online Ombudsman

The TIO welcomes the opportunity to comment on the merits of establishing an Online Ombudsman. We understand that this body might investigate, advocate and act on cyber-safety issues.

Without commenting specifically on the merits of the proposal, we do draw the Committee's attention to recent statements from the Australian and New Zealand Ombudsman Association (ANZOA⁶), which is the peak body for Ombudsmen in Australia and New Zealand, and of which the TIO is a member.

Fiona McLeod, Chair of ANZOA, has called for greater care in the use of the term 'Ombudsman'⁷. Specifically, ANZOA has asked that the term 'Ombudsman' be used to describe bodies that meet the six essential criteria for an Ombudsman (outlined below), as these attributes are what the public has come to expect of an Ombudsman's office⁸. These attributes are briefly summarised below:

⁶ Further information about ANZOA is available at www.anzoa.com.au.

⁷ ANZOA Media Release dated 18 May 2010, http://www.anzoa.com.au/Use_of_term_Ombudsman.html.

⁸ www.anzoa.com.au/ANZOA_Media-release_Essential-Criteria-for-use-of-the-term-Ombudsman.pdf.

1. independence – the office of the Ombudsman must be established by legislation or as an incorporated or accredited body so that it is independent of the organisations it investigates
2. jurisdiction – the jurisdiction should be clearly defined in legislation or in the document establishing the office and should generally extend to the administrative actions or services of organisations falling within the Ombudsman’s jurisdiction
3. powers – the Ombudsman must be able to investigate whether an organisation within jurisdiction has acted fairly and reasonably in taking or failing to take administrative action or in providing or failing to provide a service
4. accessibility – there must be no charge to a complainant for the Ombudsman’s investigation of a complaint
5. procedural fairness – the actions of the Ombudsman and staff must not give rise to a reasonable apprehension of partiality, bias or prejudice, and
6. accountability – the Ombudsman must be accountable to the Parliament if it is a Parliamentary Ombudsman and to an independent board of industry and consumer representatives if an Industry-based Ombudsman.

If the Inquiry on Cyber-Safety considers that there are merits to establishing an office called the ‘Online Ombudsman’, the TIO strongly recommends that the office meet the ANZOA criteria.

Alternatively, if the body proposed is to have other functions – including for example advocacy or regulatory functions – which would generally not be compatible with the functions of an ‘Ombudsman’, the TIO would strongly encourage that another and more appropriate title be used.